



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU.**

**JUDICIAL REVIEW NO. 15 OF 2017.**

**IN THE MATTER OF LAW REFORM ACT**

**AND**

**IN THE MATTER OF SETTLEMENT ON JUDGEMENT IN NAKURU HCCC NO. 218 OF 1995**

**AND**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF MANDAMUS.**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....RESPONDENT**

**EX-PARTE – EAM (a minor applying through next of kin GOM).**

**JUDGMENT**

1. Section 21 (1) of the Government Proceedings Act provides as follows:

Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

2. Section 21 (3) of the same Act on the other hand provides:

If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

3. These two provisions provide the mechanism for compelling the government to pay a monetary decree against it where the government officials fail to willingly pay. Once activated, the judgment-creditor can then approach the High Court for a writ of mandamus to compel the Accounting Officer to make the payment.

4. As Githua J. felicitously explained in *Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR*:

In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.

5. Consequently, the mechanism for realizing the fruits of one's judgment against the government is laid out and has been recounted in countless decisions. The condition precedent to the satisfaction of monetary decrees against the government is to get a certificate of order against the government in the prescribed form and serve it upon the Attorney General.

6. In the present case, the Applicant filed a judicial review application through a Notice of motion dated 20/06/2017 seeking for the following orders:

a. That this Honourable Court be pleased to issue an order of Mandamus compelling and or commanding the permanent secretary ministry of defence, the respondent herein, to pay to the subject judgment award due to them from the year 6<sup>th</sup> February, 2001 to date which sum of money stand at Kshs. 104,850/= together with interest till payment in full as per judgment of the court in Nakuru Hccc No. 218 of 1995.

b. That this Honourable Court be pleased to issue an order of Mandamus compelling and/or commanding the permanent secretary ministry of Defence, the respondent herein to revise and pay the subject judgment award as decree in Nakuru Hccc No. 218 of 1995.

c. That the cost of the application *be provided for*.

7. The gist of the application is that the Applicant was involved in a road accident and filed a civil suit *Nakuru HCCC No. 218 of 1995*. The suit was against Nyakwegata Bus Service as the Defendant with the Attorney General as the 1<sup>st</sup> Third Party. There were two other Third Parties in the suit. Judgment was granted in favour of the Applicant for special and general damages of Kshs. 1,258,000/= (to earn interest from the day of judgment), further court fees Kshs. 70,000/= and costs of the suit Kshs. 75,000/= (to earn interest from the date of filing the suit).

8. The Respondent was apportioned liability at 7.5% liability. This meant, the Government and was therefore to pay Kshs. 104,850/= together with interest until payment in full. The government failed to pay the amount.

9. The present proceedings, therefore, are to compel the government to pay the amount. Unfortunately, the Applicant has tangled himself in a knot. As the Government Proceedings Act clearly provides, for one to satisfy a money decree against the government, one must first obtain a Certificate of Order Against the Government for the amount in the decree. That Certificate may or may not include a Certificate of Costs. That, as established above, is the condition precedent to realizing a money decree against the government.

10. Here, the Applicant has not obtained the Certificate of Order Against the Government for the decretal amount. Instead, all he has attached is a decree and a Certificate of Taxation. To reiterate, the Certificate required under Section 21(1) of the Government Proceedings Act is a Certificate of Order Against the Government not a Certificate of Taxation as has been annexed here. Under section 21(3), the Accounting Officer in a Ministry can only pay *the amounts indicated in the Certificate of Order Against the Government*.

**11. Given my analysis above, the conclusion is foregone: the orders sought cannot be granted because the condition precedent stipulated in section 21(1) of the Government Proceedings Act has not been satisfied. Consequently, the Application dated 20/06/2017 is dismissed with costs.**

12. Orders accordingly.

**Dated and delivered at Nakuru this 16<sup>th</sup> day of January, 2019**

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**JOEL NGUGI**

**JUDGE**